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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,663	07/29/2005	Erting Hagen	04-985	7409
20306 7590 01/06/2009 MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606				
EXAMINER NUTTER, NATHAN M				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
01/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,663

Applicant(s)

HAGEN ET AL.

Examiner

Nathan M. Nutter

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5 and 7-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5 and 7-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3 December 2008 has been entered.

Response to Amendment

In response to the amendment filed 3 December 2008, the following is placed in effect.

The objection to claims 11 and 20-22 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim, is hereby expressly withdrawn.

The rejection of claims 1 and 3-25 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, is hereby expressly withdrawn.

The rejection of claims 1-25 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is hereby expressly withdrawn.

The rejection of claims 1-25 under 35 U.S.C. 103(a) as being unpatentable over Pitkanen et al (US 6,342,564), is hereby expressly withdrawn.

The rejection of claims 1-25 under 35 U.S.C. 103(a) as being unpatentable over Govoni et al (US 5,610,244), is hereby expressly withdrawn.

The following new grounds of rejection are being made.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4, 5 and 7-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Specification does not teach the now claimed, "feeding only propylene to at least one slurry reactor." The adjective loses credence in view of the recitation that follows of "in the presence of a polymerization catalyst." The concept is not shown either in paragraphs [0024] or [0025] or the Examples on pages 12 and 13.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7-12 and 15-25 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Malm et al (US 7,279,526).

The reference to Malm et al teaches the manufacture of a polypropylene composition and molded articles produced therefrom using a process that may comprise a slurry polymerization step followed by two gas phase polymerization steps in sequence, as herein recited and claimed. The process is shown at column 3 (lines 30-44), wherein the α -olefin is ethylene. Note the paragraph bridging column 3 to column 4, the Examples and Table 2 at columns 9 and 10, which show monomer concentrations and the addition of hydrogen. Further, note column 4 (lines 55-63). The reference shows all of the process steps and the contemplated monomers and overlapping concentrations. The products thereof would be expected to possess identical characteristics, as herein claimed.

When a reference discloses all of the limitations of a claim except a property or function, and the Examiner is unable to determine whether or not the reference

inherently possesses properties that anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al 619 F. 2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). Note MPEP § 2112-2112.02. As such, the instant claims are deemed to be anticipated, or at least obvious, from the teachings of Malm et al.

Claim Rejections - 35 USC § 103

Claims 1, 4, 5 and 7-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huovinen et al (US 6,503,993).

The reference to Huovinen et al teaches the manufacture of a polypropylene composition and molded articles produced therefrom using a process that may comprise a slurry polymerization step followed by two gas phase polymerization steps in sequence, as herein recited and claimed.

The patent to Huovinen et al shows the process steps at column 8 (lines 14 et seq.), wherein a propylene homopolymer is produced in a stirred-tank slurry reactor (lines 14, 15 and 19-22). This is followed by the use of two gas phase reactors (lines 30-33), all arranged in series (lines 64-65). The addition of ethylene is shown (lines 41-43). Note, further, the many Examples. At column 16, Example 8 (comparative), the reference shows the production of first a homopoly of propylene, with a subsequent addition of ethylene to produce an elastomer in the first gas phase reactor. These steps are echoed in other Examples.

The skilled artisan would have a high expectation of success to achieve the production of the polymer blends as herein recited following the steps disclosed in the reference. Nothing surprising or unexpected has been shown on the record.

Response to Arguments

Applicant's arguments filed 3 December 2008 have been fully considered but they are not persuasive.

With regard to Huovinen et al, at column 8 (lines 41 et seq.) the reference teaches the process steps and choices of monomers, as recited herein. A homopolymer of propylene is produced at column 8 (lines 14 et seq.) in a slurry reactor. The use of gas phase reactors as the second and third chambers in the series is shown at (lines 22-25). The addition ethylene is shown at column 8 (lines 44-43). Manipulation of monomer content is shown variously throughout the reference, column 17 (lines 37-40), as a "desired amount." The motivation to manipulate these monomers is shown, regardless whether applicants ignore the teachings, as pointed out. As such, the reference clearly shows the process and the manipulation of the monomers. Applicant argues voluminously over characteristics of the end product with regard to monomer choice, but fails to show or explain why the reference composition would not behave in like fashion having the same characteristics.

As such, and given the level of skill in the art to manipulate monomers and the compositional limitations ascribed to each and to the polymers produced therefrom, a practitioner of ordinary skill would enjoy a high expectation to arrive at the instantly

claimed invention. The use of known constituents in known manner would yield predictable results. Nothing unexpected is seen on the record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/
Primary Examiner, Art Unit 1796

nmn

3 January 2009